

D. Cintex will Satisfy Consumer Protection and Service Quality Standards

A carrier requesting designation as an ETC must “demonstrate that it will satisfy applicable consumer protection and service quality standards.”²³ This requirement is satisfied by a wireless applicant if it commits to “comply[ing] with the Cellular Telecommunications and Internet Association’s Consumer Code of Wireless Service.”²⁴ Cintex will comply with the Consumer Code.

E. Cintex Offers a Local Usage Plan Comparable to Those Offered by the Incumbent Local Exchange Carrier

As part of the voice grade access to the PSTN, an ETC must provide local calling. Cintex provides subscribers the ability to send and receive local phone calls wherever it provides service. Moreover, local usage is in all of Cintex’s calling plans, including those plans which will comprise Lifeline offerings. Section 54.202(a)(4) of the Commission’s rules requires an ETC applicant to “demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.”²⁵ The Commission has explained that an ETC applicant’s local usage plans should be reviewed on a case-by-case basis to ensure that each ETC provides a local usage component in its universal service offering that is comparable to the plan offered by the incumbent LEC in the area.²⁶ The Commission has not adopted any minimum local usage requirements.²⁷ As a designated ETC, Cintex will comply with any minimum local usage requirements adopted by the Commission. Most importantly, as described in section III above, Cintex’s Lifeline offerings will go beyond those of other ETCs in a very important respect. Cintex’s Lifeline customers will receive as part of their Lifeline

²³ 47 C.F.R. § 54.202(a)(3).

²⁴ Id.

²⁵ 47 C.F.R. § 54.202(a)(4).

²⁶ *Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371 (2005).*

²⁷ *Id.* ¶ 32.

service, specified amounts of *free* wireless service. That is, Lifeline customers will be able to use Cintex’s service to initiate and receive specified amounts of wireless calling – local and long distance – with no charge to the customers.

F. Cintex Will Provide Equal Access

As required by Section 54.202(a)(5) of the Commission’s rules, Cintex will “provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.”²⁸

G. Cintex Will Comply With the Lifeline and Link Up Certification and Verification Requirements of 47 C.F.R. §§ 54.409, 54.410 and 54.416

Sections 54.409, 54.410 and 54.416 of the Commission’s rules require ETCs to comply with certain requirements of initial certification of eligibility and the verification of continued eligibility for participation in the Lifeline and Link Up programs.²⁹ Cintex will certify and verify customers in accordance with those rules.

VIII. CINTEX WILL PROVIDE THE SUPPORTED SERVICES OVER A COMBINATION OF ITS OWN FACILITIES AND RESALE OF ANOTHER CARRIER’S SERVICES

As required by the Act and Commission’s rules, Cintex will provide certain services supported by the universal service support mechanisms using a combination of its own facilities and the facilities of Sprint.³⁰ Cintex will provide access to directory assistance and access to operator services in part over its own facilities. Specifically, Cintex owns a platform located at 1010 Wayne Street Avenue, Suite 630, Silver Spring, Maryland 20910-5620. All (1) directory assistance calls, (2) operator services calls, and (3) customer service calls are forwarded to the

²⁸ 47 C.F.R. § 54.202(a)(5).

²⁹ 47 C.F.R. §§ 54.410, 54.416.

³⁰ 47 USC § 214(e)(1)(A), 47 C.F.R. § 54.201(d)(1) (an ETC must offer the supported services “using its own facilities or a combination of its own facilities and resale.”)

platform. Cintex leases a T1 from XO Communications, which connects the public switched telephone network to the platform; these three call types are transmitted over the T1 to the platform. The platform, in turn, can route the calls to any location designated by Cintex. As discussed below, directory assistance calls are routed to a directory assistance provider, while operator services calls are routed to Cintex's own call center.

The Commission's rules define "facilities" as "any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part."³¹ Cintex uses its own physical components to route 411 and operator services calls. These calls will be routed by Cintex to either its own call center or to a vendor that will provide directory assistance and operator services.

The Commission has been clear that a carrier does not have to use its own facilities to provide all of the supported services in order to be designated an ETC. The Commission explained that "if a carrier uses its own facilities to provide at least one of the designated services, and the carrier otherwise meets the definition of "facilities" adopted here, then the facilities requirement of Section 214(e) is satisfied."³²

Further, Section 214(e)(1)(A) of the Act makes it clear that a carrier is eligible to become an ETC if it provides the supported service(s) via a "combination" of its own facilities and resale.³³ Cintex is not required to provide 411 and operator services exclusively through its own facilities. Thus, by owning physical components that route 411 and operator services calls,

³¹ 47 C.F.R. § 54.201(e).

³² USF Order, 12 FCC Rcd at 8870-71.

³³ 47 U.S.C. § 214(e)(1)(A).

Cintex satisfies the statutory requirement mandating that ETCs provide service “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”³⁴

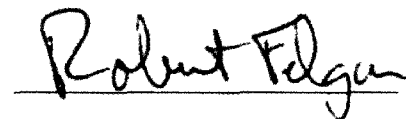
IX. DESIGNATING CİNTEX AN ETC IS IN THE PUBLIC’S INTEREST

Cintex’s Lifeline offering will provide low income consumers with increased competitive choice and the benefits of Cintex’s unique Lifeline service. As discussed in section III above, Cintex intends to offer consumers 90 free minutes that roll over from month-to-month. Moreover, Cintex will provide consumers with additional minutes at a low cost. This is exemplified by its \$20.00 airtime card, which provides 500 minutes at an effective cost of \$0.04 per minute. Low income consumers will benefit significantly from Cintex’s low cost service and high-quality phones.

X. CONCLUSION

Based on the foregoing, Cintex has demonstrated that it is eligible to be designated an ETC. Cintex respectfully requests that the Commission grant this petition expeditiously.

Respectfully submitted,



Robert Felgar
General Counsel
Cintex Wireless, LLC
11910 Parklawn, Suite U
Rockville, MD 20852
(301) 363-4306

Counsel for Cintex Wireless, LLC

August 29, 2011

³⁴ 47 U.S.C. § 214(e)(1).

Certification of Cintex Wireless, LLC

I, Paul Greene, hereby affirm under penalty of perjury that I have reviewed all of the factual assertions set forth in the foregoing petition for ETC status and that all such statements made therein are true and correct to the best of my knowledge, information and belief.

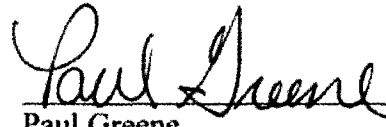

Paul Greene
CEO

EXHIBIT 1

Alabama Public Service Commission

Orders

**PINE BELT CELLULAR, INC. and PINE
BELT PCS, INC.,**

Joint Petitioners

**PETITION: For ETC status and/or
clarification regarding the jurisdiction of
the Commission to grant ETC status to
wireless carriers.**

DOCKET U-4400

ORDER

BY THE COMMISSION:

In a joint pleading submitted on September 11, 2001, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively referred to as "Pine Belt") each notified the Commission of their desire to be designated as universal service eligible telecommunications carriers ("ETCs") for purposes of providing wireless ETC service in certain of the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South, Inc. ("Verizon"). The Pine Belt companies noted their affiliation with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama, but clarified that they exclusively provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services in their respective service areas in Alabama in accordance with licenses granted by the Federal Communications Commission ("FCC"). The pivotal issue raised in the joint pleading of Pine Belt companies is whether the Commission will assert jurisdiction in this matter given the wireless status of the Pine Belt companies.

As noted in the filing of the Pine Belt companies, state Commissions have primary responsibility for the designation of eligible telecommunications carriers in their respective jurisdictions for universal service purposes pursuant to 47 USC §214(e). The Commission indeed established guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997.

For carriers not subject to state jurisdiction, however, §214(e)(6) of the Telecommunications Act of 1996 provides that the FCC shall, upon request, designate such carriers as ETCs in non-rural

service territories if said carriers meet the requirements of §214(e)(1). In an FCC Public Notice released December 29, 1997 (FCC 97-419) entitled "Procedures for FCC designation of Eligible Telecommunications Carriers pursuant to §214(e)(6) of the Telecommunications Act", the FCC required each applicant seeking ETC designation from the FCC to provide, among other things, "a certification and brief statement of supporting facts demonstrating that the Petitioner is not subject to the jurisdiction of a state Commission."

The Pine Belt companies enclosed with their joint pleading completed ETC application forms as developed by the Commission. In the event the Commission determines that it does not have jurisdiction to act on the Pine Belt request for ETC status, however, the Pine Belt companies seek an affirmative written statement from the Commission indicating that the Commission lacks jurisdiction to grant them ETC status as wireless carriers.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services is one that was rather recently addressed by the Commission. The Commission indeed issued a Declaratory Ruling on March 2, 2000, in Docket 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June of 1999, the APSC has no authority to regulate, *in any respect*, cellular services, broadband personal communications services and commercial mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC §214(e)(6).

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission's jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services. Providers of such services seeking Eligible Telecommunications Carrier status should accordingly pursue their requests through the Federal Communications Commission.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 12th day of March, 2002.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary



STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

November 8, 2010

In reply, please refer to:
UR:PAP

Jacqueline Hankins
Helein & Marashlian
1420 Spring Hill Rd
Suite 205
McLean, VA 22102

Re: Request for Letter Clarifying Jurisdiction Over Wireless ETC Petitions

Dear Ms. Hankins:

The Department of Public Utility Control (Department) acknowledges receipt of your October 25, 2010 letter filed on behalf of Boomerang Wireless, LLC d/b/a Ready Mobile (Ready Mobile) requesting clarification as to whether the Department claims jurisdiction to designate wireless eligible telecommunications carriers (ETC) in Connecticut.

The Department does not regulate or license mobile carrier services' rates and charges and therefore, Ready Mobile should apply to the Federal Communications Commission for purposes of being designed an ETC.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

A handwritten signature in black ink, appearing to read "K. Santopietro".

Kimberley J. Santopietro
Executive Secretary

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF)
VERIZON DELAWARE INC., TO MODIFY THE)
LIFELINE SERVICE BY ADDING AN INCOME) PSC DOCKET NO. 05-016T
QUALIFIER TO THE ELIGIBILITY CRITERIA)
(FILED JUNE 17, 2005))

ORDER NO. 6736

This 11th day of October, 2005, the Commission determines and Orders the following:

1. In the jargon of the federal Lifeline/Link-Up program, Delaware is a "federal default State." Delaware has never, by either state law or state regulation, ordained, nor funded, a stand-alone program to provide discounts on basic telephone services charges for low-income subscribers. Consequently, it was not until 1997, when the Federal Communications Commission ("FCC") revamped the federal Lifeline/Link-Up program, that Delaware subscribers first became eligible for participation in the federal Lifeline program.¹ And given that in a "federal default State" only federally-raised monies are used to reimburse eligible carriers for the Lifeline and Link-Up discounts, it is the FCC, and not the state commission, that gets to call the tune about who should be eligible to receive these federally-subsidized price reductions.

2. Since 1997, Verizon Delaware Inc. ("VZ-DE") has been designated as an "eligible telecommunications carrier" and has offered

¹See PSC Order No. 4684 (Dec. 16, 1997) (summarizing Delaware history and electing to allow "Tier 2" federal support to eligible Delaware subscribers).



Public Service Commission of the District of Columbia
1333 H Street, N.W., 2nd Floor, West Tower
Washington, D.C. 20005
(202) 626-5100
www.dcpssc.org

May 26, 2011

Via First Class & Certified Mail


Douglas D. Orvis II
Kimberly A. Lacey
Bingham McCutchen LLP
2020 K Street, NW
Washington, DC 20006-1806

Dear Mr. Orvis and Ms. Lacey:

Thank you for your May 24, 2011 letter requesting information on whether the Public Service Commission of the District of Columbia ("Commission") designates wireless telecommunications carriers as eligible telecommunications carriers ("ETC") for the purposes of receiving federal universal service funding. Please be advised that, pursuant to section 34-2006(b) of the District of Columbia Code, the Commission does not have jurisdiction over wireless carriers. Thus, the Commission has no authority to designate wireless telecommunications carriers as ETCs.

Attached please find a copy of the relevant section of the District of Columbia Code for your information. Should you need anything further, please contact Lara Walt at 202-626-9191 or lwalt@psc.dc.gov.

Sincerely,


Richard A. Beverly
General Counsel

Enclosure



D.C. Council Home

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DC ST § 34-2006

Formerly cited as DC ST 1981 § 43-1456

DC ST § 34-2006

Formerly cited as DC ST 1981 § 43-1456

District of Columbia Official Code 2001 Edition Currentness

Division V. Local Business Affairs

Title 34. Public Utilities. (Refs & Annos)

Subtitle V. Telecommunications.

Chapter 20. Telecommunications Competition. (Refs & Annos)

➔ **§ 34-2006. Exemptions.**

(a) This chapter shall not apply to cable television services performed pursuant to an existing cable television franchise agreement with the District of Columbia which is in effect on September 9, 1996. To the extent that a cable television company seeks to provide local exchange services within the District of Columbia, such company shall be regulated under the provisions of this chapter for their local exchange services.

(b) Pursuant to the federal Telecommunications Act of 1996, this chapter shall not apply to licensed or unlicensed wireless services authorized by the Federal Communications Commission operating in the District of Columbia.

(c) This chapter shall not:

- (1) Apply to the provision, rates, charges, or terms of service of Voice Over Internet Protocol Service or Internet Protocol-enabled Service;
- (2) Alter the authority of the Commission to enforce the requirements as are otherwise provided for, or allowed by, federal law, including the collection of Telecommunications Relay Service fees and universal service fees;
- (3) Alter the authority of the Office of Cable Television and Telecommunications with respect to the provision of video services in the District of Columbia; or
- (4) Alter the Commission's existing authority over the regulation of circuit-switched local exchange services in the District of Columbia.

CREDIT(S)

(Sept. 9, 1996, D.C. Law 11-154, § 7, 43 DCR 3736; June 5, 2008, D.C. Law 17-165, § 3(c), 55 DCR 5171.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1456.

Effect of Amendments

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850)413-6199

Public Service Commission

June 2, 2011

Mr. Douglas D. Orvis, II
Bingham McCutchen, LLP
2020 K. Street NW
Washington, DC 20006-1806

Re: Undocketed – TAG Mobile, LLC's ETC Designation

Dear Mr. Orvis:

We received your May 25, 2011 letter requesting a statement that the Florida Public Service Commission's jurisdiction to grant ETC designation to TAG Mobile, LLC changed with Governor Scott's approval of HB 1231, the telecom reform bill.

This letter acknowledges that Governor Scott's approval of HB 1231, the telecom reform bill, revises Chapter 364, Florida Statutes, thereby changing the Commission's jurisdiction regarding telecommunications companies. I direct your attention to Chapter 364, Florida Statutes, including the revisions by HB 1231 for the proposition that the Federal Communications Commission, rather than this Commission is the appropriate agency to consider TAG Mobile, LLC's bid for ETC status.

Sincerely,

A handwritten signature in black ink that reads "S. Curtis Kiser".

S. Curtis Kiser
General Counsel

cc: Beth W. Salak, Director, Division of Regulatory Analysis
Robert J. Casey, Public Utilities Supervisor, Division of Regulatory Analysis
Adam J. Teitzman, Attorney Supervisor, Office of the General Counsel
Ann Cole, Commission Clerk, Office of Commission Clerk

DT 03-128

RCC MINNESOTA, INC.
RCC ATLANTIC, INC.

Petition for Designation as an Eligible
Telecommunications Carrier

Order Regarding Jurisdiction of the Commission

O R D E R N O. 24,245

December 5, 2003

Appearances: Gallagher, Callahan and Gartrell by Andrew B. Eills, Esq. for RCC Minnesota, Inc. and RCC Atlantic, Inc.; Primmer and Piper by Trevor R. Lewis, Esq. and Paul J. Phillips, Esq. for the New Hampshire Telephone Association; Preti Flaherty by Joseph G. Donahue, Esq. and Benjamin M. Sanborn, Esq. for the Union Telephone Company; Victor D. Del Vecchio, Esq. for Verizon New Hampshire; F. Anne Ross, Esq. for the Office of Consumer Advocate; and Suzanne Amidon, Esq. for Commission Staff.

I. PROCEDURAL BACKGROUND

On June 27, 2003, RCC Minnesota, Inc., and RCC Atlantic, Inc. (collectively RCC) filed with the New Hampshire Public Utilities Commission (Commission) a petition for Designation as an Eligible Telecommunications Carrier (ETC) pursuant to Section 214(e)(2) of the Telecommunications Act as amended and 47 C.F.R. § 54.201 of the Federal Communications Commission's (FCC) rules. RCC Minnesota, Inc. is authorized by the FCC as a Personal Communications Service carrier in the Manchester-Nashua-Concord, New Hampshire Basic Trading Area and as the Cellular Radiotelephone Service provider in Portsmouth-Dover-Rochester, New Hampshire-Maine New England Cellular Market Area. RCC Atlantic, Inc. d/b/a Cellular One is authorized by the

FCC as a Cellular Radiotelephone Service provider in New Hampshire Rural Service Area 1-Coos, New Hampshire. These FCC authorizations designate RCC's service area. RCC provides only cellular mobile radio communications services (hereinafter referred to as cellular service) in these areas.

In connection with its petition, RCC requests that the Commission redefine the service area of Granite State Telephone (GST) to classify each wire center as a separate service area. RCC states that redefining GST's service area is necessary to facilitate advance universal service for those customers of RCC living in GST's service area. If granted, the designation would make RCC eligible to receive financial support from the federal Universal Service Fund (USF).

Because RCC provides only cellular services in New Hampshire, the threshold question for the Commission is whether RSA 362:6 or other statutory provisions gives the Commission jurisdiction to make an ETC finding. On July 29, 2003, the Commission issued an Order of Notice directing RCC and interested parties to file with the Commission no later than August 21, 2003 Memoranda of Law addressing the Commission's jurisdiction. The Commission requested that RCC and other interested parties delineate whether the Commission is barred from asserting jurisdiction to designate RCC as an ETC in light of NH RSA 362:6, which states:

The term "public utility" shall not include any individual, partnership, corporation, company, association, or joint stock association, including any trustee, administrator, executor, receiver, assignee, or other personal representative who provides purchases or sells cellular mobile radio communication services. Such services shall not be subject to the jurisdiction of the public utilities commission pursuant to this title.

The Order scheduled a hearing on the jurisdictional issue for August 28, 2003, instructed RCC to publish notice of the Order in a newspaper of statewide circulation, and set a deadline of August 25, 2003 for Petitions to Intervene. RCC filed an affidavit of publication with the Commission on August 14, 2003.

On July 30, 2003, the Office of Consumer Advocate (OCA) notified the Commission that it would participate in this matter on behalf of residential ratepayers consistent with RSA 363:28. On August 20, 2003, the New Hampshire Telephone Association (NHTA), on behalf of independent telephone companies Bretton Woods Telephone Company, Dixville Telephone Company, Dunbarton Telephone Company, Granite State Telephone, Kearsarge Telephone Company, Northland Telephone Co. of New Hampshire, Hollis Telephone Company, Merrimack County Telephone and Wilton Telephone Company (collectively ITCs) filed a Petition to Intervene and a Memorandum of Law. The ITCs also filed a Motion of Paul Phillips, Esq. for Admission Pro Hac Vice, to represent the ITCs in this matter.

On August 21, 2003, Verizon New Hampshire (Verizon) filed a motion to intervene and a Memorandum of Law, and OCA and RCC each filed Memoranda of Law. Also on August 21, 2003, Union Telephone Company (UTC) filed a Petition to Intervene and a Memorandum of Law. UTC also requested that the Commission authorize the appearance of Attorneys Joseph G. Donahue and Benjamin M. Sanborn on behalf of UTC.

The Commission, at a hearing on August 28, 2003, granted all Petitions to Intervene and Motion for Admission Pro Hac Vice filed on behalf of Mr. Phillips. The Commission also granted UTC's request to authorize Mr. Donahue and Mr. Sanborn to appear before the Commission.

II. POSITION OF THE PARTIES

A. RCC

RCC argues that the Commission has jurisdiction over RCC for the purpose of designating RCC as an ETC in the State of New Hampshire. RCC asserts that nothing in RSA 362:6 prohibits the Commission from determining the status of RCC as an eligible carrier pursuant to Section 214(e)(6) of the Telecommunications Act of 1996. 47 U.S.C. § 214(e)(6). RCC points out that Congress specifically gave state commissions the first opportunity to review and make ETC designation decisions, and that only in the

event that a state commission declined to accept jurisdiction should the matter of designation be moved to the FCC for action.

RCC also argues that the FCC, in its First Report and Order in its Universal Service Docket, specifically stated that "not all carriers are subject to the jurisdiction of a state commission. Nothing in section 214(e)(1), however, requires that a carrier be subject to the jurisdiction of a state commission in order to be designated an eligible telecommunications carrier. Thus tribal telephone companies, cellular providers and other carriers not subject to the full panoply of state regulation may still be designated as eligible telecommunications carriers." First Report and Order, 12 FCC Rcd 8776,8859 (May 7, 1997). RCC concludes that the Commission is therefore not barred from designating a cellular provider as an ETC.

RCC points out that the New Hampshire legislature contemplated the eligibility of cellular providers for status as a carrier in a state universal fund program. See RSA 374:22-p, IV(c). RCC argues that the New Hampshire legislature's inclusion of cellular providers in the state USF program indicates that the legislature intended the Commission to have some authority over cellular providers. RCC points out that paragraph IV(a) of RSA 374:22-p requires every provider of "intrastate telephone services", including providers of "cellular mobile telecommunications services", to contribute to the state

USF once it is established. Because the state USF law required implementation to be consistent with the federal law, and because under federal law wireless providers qualify for ETC status, RCC argues that it would be implausible under the New Hampshire law that an intrastate telephone service provider would be required to contribute to a USF without being eligible to receive universal service support.

RCC argued that the Commission should find that it has jurisdiction to designate any cellular provider as an ETC for purposes of the federal USF program.

B. Independent Telephone Companies

The ITCs argue that the Commission has jurisdiction under state and federal law to hear the Petition. They state that the request for designation as an ETC in New Hampshire involves a legal determination distinct from the regulation of cellular providers addressed in RSA 362:6 and that the Commission, in determining whether to designate RCC as an ETC, would not be "regulating" a cellular company in any manner. Instead, the Commission would be making a determination of whether RCC is eligible to receive federal universal service support. The ITCs aver that rather than constituting regulation, designation of RCC as an ETC would be conferring a benefit, and in the case of rural telephone companies' service territories, action requiring discretion and evaluation of the public

interest. 47 U.S.C. § 214(e)(2). The ITCs argue that the Commission is the best qualified authorized body to deliberate the issues involving public interest.

In connection with RCC's request that the Commission redefine the service area of GST, the ITCs point to federal law which expressly seeks to have state commissions serve as the sole tribunal with the initial authority to respond to a petitioner's request to redefine a rural service area. 47 C.F.R. § 54.207(c)(1). The ITCs state that even where the redefinition of the rural service area is initiated by the FCC on its own motion, the FCC must first seek the agreement of the state commission for such redefinition. 47 C.F.R. § 54.207(d). Because RCC's petition to redefine GST's rural service areas must first be filed with the Commission, and because such a petition has meaning only when considered in conjunction with a request for ETC status, the ITCs argue that the Commission has ancillary jurisdiction over the petition for designation of ETC status. See ITCs Brief pp. 5-7.

C. Union Telephone Company

UTC also believes that the Commission has jurisdiction over RCC's petition. UTC argues that RSA 362:6 states that a cellular provider is not a "public utility", but that a carrier does not have to be a public utility to qualify for ETC designation pursuant to 47 U.S.C. § 214(e)(2).

UTC notes that the purpose of this proceeding is for the Commission to make the factual and policy determinations as to whether RCC meets the statutory requirements in Section 214(1) and whether designation of RCC as an ETC is in the public interest. UTC points out that the federal law gives state commissions the authority to designate ETCs because state commissions are in the best position to determine whether such designation is in the public interest.

UTC also states that the Commission's findings regarding the public interest can be conditioned on the basis of certain commitments or actions being undertaken by cellular providers without necessarily engaging in the exercise of jurisdiction over the services of such a carrier. UTC argues that if the carrier declined to meet the conditions of eligibility, the designation as an ETC could be found not to be in the public interest, and thus there would be no affirmative regulation as a public utility. UTC concludes that because RSA 362:6 is not a bar to the Commission's exercise of jurisdiction in this case, the Commission can, and should, take jurisdiction over RCC's petition.

D. Verizon New Hampshire

Verizon argues that the Commission, under state law, lacks authority to designate RCC as an ETC eligible to receive USF support. Verizon argues that consistent with the 1996 Act

and the FCC Rules, the Commission should provide an affirmative statement that it does not regulate cellular carriers, thereby allowing RCC to request such designation directly from the FCC.

Verizon states that the federal law which confers primary responsibility on states to designate ETCs that meet the eligibility requirements of the 1996 Act was amended in 1997 to take into account situations where the petitioning carrier was not subject to the jurisdiction of a state commission. The law provides that in such a situation, petitions should request the FCC rather than the state commission to designate a carrier as an ETC consistent with the applicable law. 47 U.S.C. § 214(e)(6).

Verizon argues that RSA 362:6 specifically excludes from the definition of a public utility any entity that "provides, purchases or sells cellular mobile radio communication services. Such services shall not be subject to the jurisdiction of the public utilities commission pursuant to this title." RSA 362:6. Verizon states that the Commission has only that authority delegated to it by the legislature and, in this case, authority to regulate cellular providers has been specifically withheld.

Verizon argues that the legislature affirmed its decision to withhold Commission jurisdiction of cellular in 2001, when it created standards for affordable telephone service. See RSA 374:22-p. The statute provides that "subject to RSA 362:6,;

the commission shall require every provider of intrastate telephone service to participate in outreach programs designed to increase the number of low-income telephone customers on the network through increased participation in any universal service program approved by the commission and statutorily established by the legislature." RSA 374:22-p II. Verizon states that the exclusion of CMRS providers from outreach requirements underscores the Commission's lack of authority over CMRS providers. Verizon argues that the Commission would consequently be barred from directing cellular providers to undertake outreach to benefit low income customers. Verizon further argues that in any event, the legislature has not established a state universal service fund, a condition precedent to universal service implementation, and therefore the Commission has no authority to implement RSA 374:22-p.

Verizon states that the Commission should issue an affirmative statement that it lacks jurisdiction to make a designation of ETC status and permit RCC to apply to the FCC for such designation. In the alternative, Verizon requests that if the Commission concludes it has jurisdiction to designate RCC as an ETC, the Commission should defer taking further action until the FCC resolves ETC eligibility and USF issues that are currently pending before the FCC. *Verizon Memorandum, pp.7-8.*

E. OCA

Like Verizon, the OCA argues that the Commission does not have jurisdiction over RCC's petition requesting designation as an ETC because RCC is a cellular provider, which RSA 362:6 specifically excludes from Commission jurisdiction. The OCA also argues that while RSA 374:22-p, the state's universal service fund program, includes cellular providers, RSA 374:22-p does not eliminate the exclusion created in RSA 362:6.

OCA notes 47 U.S.C. § 214(e)(6), which provides that if a state commission does not have jurisdiction over a carrier applying for ETC designation, the FCC is the regulatory agency with authority to make such designation for that carrier. OCA states in this case the Commission has no jurisdiction over cellular carriers and the petition by RCC should properly be brought to the FCC.

F. Staff

Staff argues that the Commission has jurisdiction in this matter. Staff concurs with the arguments of RCC. Specifically, Staff agrees that RSA 362:6 prohibits the Commission from regulating the services of a cellular provider. However, in this case, Staff points out that RCC requested designation as an ETC on its own volition and submitted a